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Filing date: **07/16/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177747
Party	Defendant PDI, Inc. PDI, Inc. Saddle River Executive Center (SREC), 1 Route 17 South Saddle River, NJ 07458
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Date	07/16/2007
Attachments	Answer Nice-Pak v PDI - 91177747.pdf (5 pages)(16516 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NICE-PAK PRODUCTS, INC.,

Opposer,

v.

PDI, INC.,

Applicant.

Opposition No. 91177747

Application Serial No: 76/630,045

Filing Date: Jan 26, 2005

Publication Date: Feb. 6, 2007

ANSWER

Applicant PDI, Inc. ("Applicant"), by and through its attorneys, hereby submits its Answer to the Notice of Opposition filed by Opposer Nice-Pak Products, Inc. ("Opposer") as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 1 of the Notice of Opposition and accordingly denies the same.

2. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 2 of the Notice of Opposition and accordingly denies the same.

3. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 3 of the Notice of Opposition and accordingly denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 of the Notice of Opposition and accordingly denies the same, except admits that Opposer is listed as the owner of the registrations noted in Paragraph 4.

5. Applicant denies the allegations in paragraph 5 of the Notice of Opposition, except admits that Applicant seeks to register the mark PDI and Design in International Class 35 for “Promoting and marketing of medical equipment, pharmaceutical products and medicines of others; and providing employment staffing featuring auxiliary medical personnel to deal with customer care of patients by companies to which such personnel are assigned;” and in International Class 41 for “Education services, namely conducting classes, seminars, conferences and workshops in the field of drug, healthcare and medical issues.”

6. Applicant denies the allegations in Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 11 of the Notice of Opposition and accordingly denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

12. Opposer has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE (Laches)

13. Applicant has been using the mark PDI since at least 1998. Opposer has had knowledge of Applicant's use of PDI in commerce and ample opportunity to assert its rights against Applicant. Opposer unreasonably delayed asserting any rights that it may have against Applicant, and by reason of this delay Applicant has been prejudiced. On these and other grounds, Opposer's claims are barred by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE (Acquiescence)

14. Opposer has had knowledge of Applicant's use of PDI in commerce, and has impliedly consented to Applicant's use. On these and other grounds, Opposer's claims are barred by the doctrine of acquiescence.

FOURTH AFFIRMATIVE DEFENSE
(No Likelihood of Confusion)

15. The services identified by Applicant in the opposed application are noncompetitive and unrelated to the goods identified in Opposer's registrations. In addition, the channels of trade in which the services of Applicant are offered and the channels of trade in which Opposer's products are offered are very different. On these and other grounds, there is no likelihood of confusion, and thus no basis for this Opposition.

WHEREFORE, Applicant respectfully requests that this Notice of Opposition be dismissed with prejudice, and that the Trademark Trial and Appeal Board enter judgment for the Applicant, and such other and further relief as the circumstances warrant and the Trademark Trial and Appeal Board deems just.

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By: s/ Richard S. Schurin /
Richard S. Schurin

Dated: July 16, 2007
New York, New York

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER, was served by first class mail this 16th day of July, 2007 on the attorneys for Opposer, namely:

Keith E. Sharkin
King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036

s/ Richard S. Schurin /
Richard S. Schurin